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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/774,838	02/09/2004	Brian Schuck		3209

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EXAMINER

GELLNER, JEFFREY L

ART UNIT PAPER NUMBER

3643

DATE MAILED: 03/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/774,838

Applicant(s)

SCHUCK ET AL.

Examiner

Jeffrey L. Gellner

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 7,8 and 15-24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 9-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Acknowledgement is made of Applicant's IDS received 14 May 2004.

Election/Restrictions

Applicant's election of the combination of - Invention I, polyester and water lily tuber - in the replies filed on 20 July 2005 and 3 October 2005 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). Claims 7, 8, and 15-24 are withdrawn from examination because they are drawn to either the other invention or other species or both.

Claim Objections

Claims 1, are objected to because of the following informalities:

In claim 1, line 1, "said article" lacks antecedent basis.

In claim 9, line 1, "said plurality of plants" lacks antecedent basis.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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Claims are 1-6 and 9-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, lines 6-9, the language of “and said enveloped plant . . . and shipped to an end user” appears to be method steps which are improper, and indefinite, in an apparatus claim.

In claim 10, lines 3-5, the language of “said fibrous material is a strip . . .” explicitly states that the fibrous material must be around the “roots of said plant.” This contradicts the language of line 3, of “said plant having either a root or a cut end.”

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 4-6, 11, and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yoshida (JP2-154619) in view of Bourne (US 3,888,042).

As to claims 1, 2, and 4-6, Yoshida discloses a device for growing and transporting plants for transportation, the device comprising a container (1 of Figs. 1 and 2) and a mixture of potting media, soil-less media (3 of Fig. 2) covering the bottom of the container; and, fibrous material (5 of Figs. 2 and 3) enveloping and adhering to the lower end of a plant, the plant being upright in the container (see Fig. 1), the enveloped plant being supplied with water and grown in the container until fully developed (in that plants are considered fully developed when harvested and

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shipped in the container), whereby the plants are removed from the container, cleaned, drained, boxed, and shipped (inherent in good harvesting and shipped practices). Not disclosed is the fibrous material an open web type of material, non-woven, synthetic material being polyester. Bourne, however, discloses a open web type of material, non-woven, synthetic material that is polyester enveloping roots of a plant (see Figs. 1-3; col. 2 lines 1-5). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the device of Yoshida by using the fibrous material of Bourne so as to use a material with excellent mechanical strength while being permeable to air and water (see Bourne at col. 1 lines 19-68).

As to claim 11, Yoshida as modified by Bourne further disclose a coil used as a tie (6 of Fig. 3 of Yoshida).

As to claim 12, the limitations of claim 11 are disclosed and described above. Not disclosed is the ties are UV-resistant cable ties. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the device of Yoshida as modified by Bourne by using UV-resistant cable ties depending upon available materials.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yoshida (JP2-154619) in view of Bourne (US 3,888,042) in further view of Angeles et al. (US 5,613,605).

As to claim 3, the limitations of claim 2 are disclosed and described above. Not disclosed is the potting media including calcined clay. Angeles et al., however, discloses calcined clay as part of a planting medium (col. 6 lines 32-44). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the device of Yoshida as modified by

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Bourne by using calcined clay as disclosed by Angeles et al. so as to remove ethylene build-up which contributes to leaf drop (see Angeles et al. at col. 6 lines 32-44).

Claims 9 and 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yoshida (JP2-154619) in view of Bourne (US 3,888,042) in further view of Koch (US 2,115,309).

As to claim 9, the limitations of claim 1 are disclosed and described above. Not disclosed are the plants being aquatic. Koch, however, discloses use of a device with water lily (page 2 lines 55-58). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the device of Yoshida as modified by Bourne by using the device with water lilies as disclosed by Koch so as to protect a plant with unique flowers (see Koch at page 2 lines 55-58).

As to claim 10, the limitations of claim 9 are disclosed and described above. Yoshida further discloses the fibrous material being a strip around the roots to form a pod (see 5 of Fig. 3). Not disclosed is the plant being water lily with either a root or cut end. Koch, however, discloses use of a device with water lily (page 2 lines 55-58) and a cut end (1st page at lines 1-5). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the device of Yoshida as modified by Bourne by using the device with water lilies with cut ends as disclosed by Koch so as to protect a plant with unique flowers (see Koch at page 2 lines 55-58).

Allowable Subject Matter

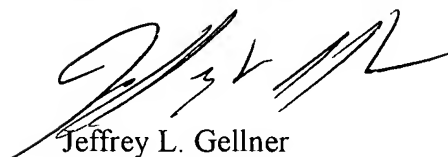
Claims 13 and 14 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Scott discloses in the prior art a devices for aquatic plants. Greenbaum and Reuter disclose in the prior art various devices with wrappings.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey L. Gellner whose telephone number is 571.272.6887. The examiner can normally be reached on Monday-Friday, 8:30-4:00, alternate Fridays off, if attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on 571.272.6891. The fax phone number for the organization where this application or proceeding is assigned is 571.273.8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jeffrey L. Gellner

Primary Examiner

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